IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8901 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

STATE OF GUJARAT

Appearance:

MR GM AMIN for Petitioners

MR RC KODEKAR, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 11/09/2000

ORAL JUDGEMENT

(Per: J.M. Panchal, J.)

Rule. Mr. R.C. Kodekar, learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioners have prayed to issue an appropriate writ, direction or order calling upon Respondent No.1 to decide the application dated February 21, 1998 submitted by the petitioners under Section 28A of the Act and redetermining the amount of compensation payable to them in terms of the judgment and award dated October 14, 1997 rendered by the learned 2nd Extra Assistant Judge, Nadiad in Land Acquisition Cases No.119 of 1991 to 129 of 1991.

3. The lands of the petitioners, particulars of which are given in Annexure C to the petition, were acquired for the public purpose of Express Highway pursuant to publication of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) in the Official Gazette on March 29, 1988. The Land Acquisition Officer had made his award on May 31, 1989 offering compensation to the claimants at the rate of Rs.3.80 per sq.m. Some of the claimants had sought references and accordingly references were made to the District Court, Kheda at Nadiad which were registered as Land Acquisition Reference Nos. 119 of 1991 to 129 of 1991. The Reference Court by judgment and award dated October 14, 1997 has awarded compensation in excess of the amount awarded by the Special Land Acquisition Officer. The petitioners were also aggrieved by the award of the Land Acquisition Officer and as their lands were acquired by the same Notifications under Section 4(1) of the Act, they submitted an application under Section 28A of the Act on February 21, 1998 and requested the Respondent No.1 to redetermine the amount of compensation payable to them on the basis of the award of the court. The application submitted by them is produced at Annexure B to the petition. The petitioners have averred in paragraph 7 of the petition that thereupon notice for hearing of the said application was given and the petitioners had also remained present on the date specified in the said notice but thereafter, no further steps have been taken by the Respondent No.1. Under the circumstances, the petitioner have filed the present petition and claimed reliefs to which reference is made earlier.

4. Though the respondents are duly served, they have not filed affidavit-in-reply controverting the averments made in the petition. The fact that the Reference Court has allowed to some of the claimants amount of compensation in excess of the amount awarded by the Special Land Acquisition Officer under Section 11 of the Act is not in dispute. It is also not in dispute that as the petitioners were aggrieved by the award of the Special Land Acquisition Officer, they had submitted an application under Section 28A of the Act as their lands were also covered by the same Notification under Section 4(1) of the Act. The statement made by the petitioners on oath that the application submitted by them under Section 28A of the Act is not decided by Respondent No.1 is not controverted by Respondent No.1. Under the circumstances, we are of the opinion that appropriate directions deserve to be issued to Respondent No.1 to decide the said application in accordance with law and within the time stipulated in this order.

5. For the foregoing reasons, the petition succeeds. The Respondent No.1 is directed to decide the application dated February 21, 1998 submitted by the petitioners under Section 28A of the Act in accordance with law as early as possible and preferably, within one month from the date of receipt of the writ. Rule is made absolute accordingly with no orders as to cost. The office is directed to send a copy of this order to Respondent No.1 immediately. It will also be open to the petitioners to produce certified copy of this order before Respondent No.1 for necessary compliance. Direct Service permitted.

(J.M. Panchal, J.)

(M.C. Patel. J.)

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